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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/918,325	08/26/97	*BARCLAY	W 2997-1-2-1-1
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MICHAEL L. TOMPKINS
1700 LINCOLN STREET
SUITE 3500
DENVER CO 80203

1W21/0410

EXAMINER

WEIER, A

ART UNIT

PAPER NUMBER

1/61

DATE MAILED:

04/10/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/918,325

Applicant(s)
Barclay

Examiner
Anthony Weier

Group Art Unit
1761



☒ Responsive to communication(s) filed on Aug 26, 1997

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 28-51 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 28-51 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art. Unit: 1761

1. Claims 30, 37-39, 46-48, and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following lack antecedent basis in claim 30: "the average" and "the same genus".

Alternative expression (e.g. and/or) are improper (see claims 37, 38, 46, 47, and 51).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Ise or

Hagemeister et al .

Either one of Ise (col. 15, line 52- col. 16, line 2) or Hagemeister et al discloses a milk product (i.e. from cows) having an increased amount of omega-3 highly unsaturated fatty acid.

It is noted that the instant claims carry many process limitations. However, determination of patentability is based on the product itself. As such, the burden shifts to applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of the claimed product. In re Thorpe, 227 USPQ 964.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

Art Unit: 1761

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Hagemeister et al or Ise taken together with either one of Ellenbogen et al or Long.

The following is being applied in the alternative if Applicants show that the products of Hagemeister et al and Ise are different from those claimed (see rejection above).

Both Hagemeister et al and Ise are silent concerning the omega fatty acid source. However, such source is well known as taught, for example, by either one of Ellenbogen et al or Long. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same as an art recognized source of omega fatty acids to be used as an alternative source for producing the products set forth in either one of Hagemeister et al or Ise.

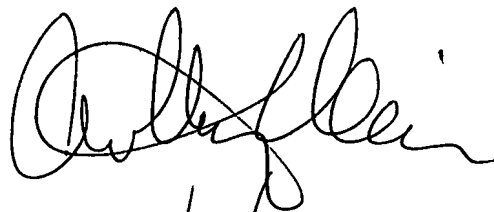
Both Hagemeister et al and Ise are silent concerning the use of said omega fatty acid source as a feed supplement, said feed supplement being coated with protein to protect it from degradation in the rumen, and to use dry grain which has been prepared by extrusion. However, it is notoriously well known to feed cows dry grain in a shaped form (e.g. pelletizing) and to employ feed supplements. Furthermore, it is well known to encapsulate feed supplements (e.g. vitamins) in proteinaceous material to protect same as called for in the instant claims. Therefore, it would have been further obvious to have included said feed supplement in dry grain and encapsulated in protein as an art recognized vehicles for feeding supplements to cows.

Art Unit: 1761

The claims call for the particular media to be used for growing the organisms used to create said omega fatty acids (e.g. fermentation). However, the particular choice of growth media would have been within the purview of a skilled artisan, and it would have been further obvious to have employed same as a matter of choice depending, for example, on the cost of same or availability.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is (703) 308-3846.

ANTHONY J. WEIER
PRIMARY EXAMINER
GROUP 1300


3/20/98

Anthony Weier

March 30, 1998